AMENDED IN SENATE AUGUST 17, 1999

AMENDED IN ASSEMBLY JUNE 1, 1999

AMENDED IN ASSEMBLY MAY 6, 1999

AMENDED IN ASSEMBLY MARCH 23, 1999

AMENDED IN ASSEMBLY MARCH 8, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL No. 162

Introduced by Assembly Member Runner
(Coauthors: Assembly Members Battin and Cedillo)
(Coauthor: Senator Polanco)

January 15, 1999

An act to amend Section 11100 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 162, as amended, Runner. Controlled substances: ephedrine: retail distributors.

(1) Existing law regulates any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes specified chemical substances to any person in this state, as specified.

This bill would make it a misdemeanor for any retail distributor to sell in a single transaction more than ~~4~~ *3* packages of a product that he or she knows to contain ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, or to knowingly sell more than ~~6~~ *9*

grams of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine. The bill ~~also~~ *would make an exception for pediatric liquid forms, as defined. The bill* would *also* make the ~~4~~ *3* packages per transaction limitation or ~~6~~ *9* grams per transaction limitation applicable to any product that is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to specified provisions of federal law, except as specified. The bill would make clarifying changes. By creating a new crime, this bill would impose a state-mandated local program.

This bill would also provide that it is the intent of the Legislature that specified provisions of state law shall preempt all local ordinances or regulations governing the sale by a retail distributor of over-the-counter products containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 11100 of the Health and Safety Code is amended to read:

11100. (a) Any manufacturer, wholesaler, retailer, or other person in this state who sells, transfers, or otherwise furnishes any of the following substances to any person or business entity in this state or any other state shall submit a report to the Department of Justice of all of those transactions:

(1) Phenyl-2-propanone.

(2) Methylamine.

(3) Ethylamine.

(4) D-lysergic acid.

(5) Ergotamine tartrate.

(6) Diethyl malonate.
(7) Malonic acid.
(8) Ethyl malonate.
(9) Barbituric acid.
(10) Piperidine.
(11) N-acetylanthranilic acid.
(12) Pyrrolidine.
(13) Phenylacetic acid.
(14) Anthranilic acid.
(15) Morpholine.
(16) Ephedrine.
(17) Pseudoephedrine.
(18) Norpseudoephedrine.
(19) Phenylpropanolamine.
(20) Propionic anhydride.
(21) Isosafrole.
(22) Safrole.
(23) Piperonal.
(24) Thionylchloride.
(25) Benzyl cyanide.
(26) Ergonovine maleate.
(27) N-methylephedrine.
(28) N-ethylephedrine.
(29) N-methylpseudoephedrine.
(30) N-ethylpseudoephedrine.
(31) Chloroephedrine.
(32) Chloropseudoephedrine.
(33) Hydriodic acid.
(34) Any of the substances listed by the Department of Justice in regulations promulgated pursuant to subdivision (b).

(b) The Department of Justice may adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that add substances to subdivision (a) if the substance is a precursor to a controlled substance and delete substances from subdivision (a). However, no regulation adding or deleting a substance shall have any effect beyond March

1 of the year following the calendar year during which the regulation was adopted.

(c) (1) Any manufacturer, wholesaler, retailer, or other person in this state, prior to selling, transferring, or otherwise furnishing any substance specified in subdivision (a) to any person or business entity in this state or any other state, shall require (A) a letter of authorization from that person or business entity that includes the currently valid business license number or federal Drug Enforcement Administration (DEA) registration number, the address of the business, and a full description of how the substance is to be used, and (B) proper identification from the purchaser. The requirement for a full description of how the substance is to be used does not require the person or business entity to reveal their chemical processes that are typically considered trade secrets and proprietary information.

(2) For the purposes of this subdivision, ''proper identification'' for in-state or out-of-state purchasers includes a valid motor vehicle operator's license or other official and valid state-issued identification of the purchaser, or individual representing the purchasing business entity, which contains a photograph of the purchaser or purchasing individual, and includes the current domicile or mailing address of the purchaser or purchasing individual, other than a post office box number. ''Proper identification'' also includes the motor vehicle license number of the motor vehicle used by the purchaser or purchasing individual at the time of transfer or the name of the common carrier and the name and valid motor vehicle operator license number of the driver of the common carrier, and the signature of the purchaser, purchasing individual, or driver of the common carrier. The person selling, transferring, or otherwise furnishing any substance specified in subdivision (a) shall affix his or her signature as a witness to the signature and identification of the purchaser, purchasing individual, or driver of the common carrier.

(d) Any manufacturer, wholesaler, retailer, or other person in this state who sells, transfers, or otherwise

furnishes a substance specified in subdivision (a) to a person or business entity in this state or any other state shall, not less than 21 days prior to delivery of the substance, submit a report of the transaction, which includes the identification information specified in subdivision (c), to the Department of Justice. However, the Department of Justice may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the substance or substances if the Department of Justice determines that the following exist:

(1) A pattern of regular supply of the substance or substances exists between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes the substance or substances and the recipient of the substance or substances.

(2) The recipient has established a record of utilization of the substance or substances for lawful purposes.

(e) This section shall not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a physician, dentist, podiatrist, or veterinarian.

(2) Any physician, dentist, podiatrist, or veterinarian who administers or furnishes a substance to his or her patients.

(3) Any manufacturer licensed by the State Department of Health Services or wholesaler licensed by the California State Board of Pharmacy who sells, transfers, or otherwise furnishes a substance to a licensed pharmacy, physician, dentist, podiatrist, veterinarian, or retail distributor as defined in subdivision (h), provided that the manufacturer or wholesaler submits records of any suspicious sales or transfers as determined by the Department of Justice.

(4) (A) Any sale, transfer, furnishing, or receipt of any drug which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and which is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal

Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or regulations adopted thereunder. However, this subparagraph shall apply to preparations in solid or liquid dosage form, *except pediatric liquid forms, as defined,* containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine ~~as the only active medicinal ingredient, or any ephedrine combination preparation. In no instance shall the sale of any product containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine be greater than six grams in a single transaction.~~ *where the individual transaction involves more than three packages or nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.*

(B) Any ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine product subsequently removed from exemption pursuant to Section 814 of Title 21 of the United States Code shall similarly no longer be exempt from any state reporting or permitting requirement, *unless otherwise reinstated pursuant to subdivision (b) or (d) of Section 814 of Title 21 of the United States Code as an exempt product*.

(5) Any transfer of a substance specified in subdivision (a) for purposes of lawful disposal as waste.

(f) (1) Any person specified in subdivision (a) or (d) who does not submit a report as required by that subdivision or who knowingly submits a report with false or fictitious information shall be punished by imprisonment in a county jail not exceeding six months, by a fine not exceeding five thousand dollars ($5,000), or by both the fine and imprisonment.

(2) Any person specified in subdivision (a) or (d) who has previously been convicted of a violation of paragraph (1) shall, upon a subsequent conviction thereof, be punished by imprisonment in the state prison, or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars ($100,000), or by both the fine and imprisonment.

(g) (1) It is unlawful for any manufacturer, wholesaler, retailer, or other person to sell, transfer, or

otherwise furnish a substance specified in subdivision (a) to a person under 18 years of age.

(2) It is unlawful for any person under 18 years of age to possess a substance specified in subdivision (a).

(3) Notwithstanding any other law, it is unlawful for any retail distributor to (i) sell in a single transaction more than ~~four~~ *three* packages of a product that he or she knows to contain ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, or (ii) knowingly sell more than ~~six~~ *nine* grams of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, *other than pediatric liquids as defined*. Except as otherwise provided in this section, the ~~four~~ *three* package per transaction limitation or ~~six~~ *nine* gram per transaction limitation imposed by this paragraph shall apply to any product that is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), or regulations adopted thereunder, ~~and that has been~~ *unless* exempted from the requirements of the federal Controlled Substances Act by the federal Drug Enforcement Administration pursuant to Section 814 of Title 21 of the United States Code.

(4) A violation of this subdivision is a misdemeanor.

(h) For the purposes of this article, the following terms have the following meanings:

(1) ''Drugstore'' is any entity described in Code 5912 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(2) ''General merchandise store'' is any entity described in Codes 5311 to 5399, inclusive, and Code 5499 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(3) ''Grocery store'' is any entity described in Code 5411 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(4) ‘‘Ordinary over-the-counter ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine product’’ means a product containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine sold in package sizes of not more than 3.0 grams of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, and is packaged in blister packs, each blister containing not more than two dosage units, or where the use of blister packs is technically infeasible, is packaged in unit dose packets or pouches; or, if a liquid, sold in package sizes of not more than 3.0 grams of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.

(5) *“Pediatric liquid forms” means* _____.

(6) ‘‘Retail distributor’’ means a grocery store, general merchandise store, drugstore, or other related entity, the activities of which, as a distributor of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products, are limited exclusively to the sale of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products for personal use both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales. ‘‘Retail distributor’’ includes an entity that makes a direct sale, but does not include the parent company of that entity if the company is not involved in direct sales regulated by this article.

~~(6)~~

(7) ‘‘Sale for personal use’’ means the sale in a single transaction to an individual customer for a legitimate medical use of a product containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine in dosages at or below that specified in paragraph (3) of subdivision (g). ‘‘Sale for personal use’’ also includes the sale of those products to employers to be dispensed to employees from first-aid kits or medicine chests.

(i) It is the intent of the Legislature that this section shall preempt all local ordinances or regulations governing the sale by a retail distributor of over-the-counter products containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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